

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 709 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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GITABEN LAXMANJI NEMCHAND

Versus

HUSEINBHAI JABIRBHAI

BANDIKHARWALA

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Appearance:

MR DJ BHATT for Petitioner

MR DF AMIN for Respondent No. 1

MR BS PATEL for respondent No.2.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/07/98

ORAL JUDGEMENT

Rule.Mr. D.F.Amin for respondent No.1 and Mr.  
B.S.Patel for respondent No.2 waive service of the  
Rule.At the request of the learned Advocates, this  
revision application is taken up for final hearing  
to-day.

The applicant - original plaintiff - has filed  
Special Civil Suit No. 163/86 in the Court of learned  
Civil Judge (S.D.) Godhra claiming possession of the  
truck and profit and loss accounts during the intervening  
period. It appears that the examination in chief of the  
applicant was recorded at Ex.23 on 18-1-1988. However,  
the applicant had not remained present on number of  
occasions and on 6-7-93 as the applicant again remained  
absent, the suit was dismissed for want of prosecution on  
31-7-93. The applicant thereafter filed application  
being Miscellaneous Civil Application No. 50/93 for  
restoration under Order 9 Rule (9) of the CPC . The  
learned Civil Judge rejected that application also. The  
applicant has challenged both these orders in this

revision application.

Having gone through the reasoning of the learned trial Judge, it appears that the learned Judge was of the view that the applicant was given number of opportunities . However, she has not remained present and, therefore, the Court has disposed of the suit on merits. Having seen the reasoning of the learned trial Judge and the order dated 31-7-93, it clearly transpires that the suit was dismissed for want of prosecution only. In other words, the learned trial Judge has not decided the suit on merits. The applicant-plaintiff has come out with explanation for remaining absent. However, without entering into the merits of the same, this revision application is required to be allowed on the short ground that the suit was not disposed of on merits and was on the contrary disposed of for want of prosecution.

In the result, this revision application is allowed. The orders dated 31-7-93 below Ex.71 and dated 19-8-96 below Ex.17 are quashed and set aside on the condition that the applicant shall pay costs to opponent-defendant No.1 which is quantified at Rs.700/-. The learned trial Judge is directed to hear the suit filed by the applicant from the stage of cross-examination of the applicant when it was dismissed and for that purpose the learned trial Judge shall fix appropriate date and on the fixed date all the parties shall remain present and proceed with the suit. Considering the fact that the suit is of 1988, the learned trial Judge shall dispose of the same as expeditiously as possible and preferably within six months from the date of the receipt of this order. Rule is made absolute accordingly with coststo be paid to the defendant-opponent No.1 which is quantified at Rs.700/as stated above.No order as to costs as regards opponent No.2 is concerned.

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